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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

DERRIK DIAMOND,	)	Case No.: 1:19-cv-00857 - LJO - JLT
	)	
Plaintiff,	)	SCHEDULING ORDER (Fed. R. Civ. P. 16)
	)	
v.	)	Pleading Amendment Deadline: 12/19/2019
	)	
WALMART INC., et al.,	)	Discovery Deadlines:
	)	Non-Expert: 2/10/2020
Defendants.	)	Expert: 4/1/2020
	)	Mid-Discovery Status Conference:
	)	12/3/2019 at 8:30 a.m.
	)	
	)	Non-Dispositive Motion Deadlines:
	)	Filing: 4/13/2020
	)	Hearing: 5/11/2020
	)	
	)	Dispositive Motion Deadlines:
	)	Filing: 5/26/2020
	)	Hearing: 7/7/2020
	)	
	)	Settlement Conference:
	)	1/22/2020 at 9:00 a.m.
	)	510 19th Street, Bakersfield, CA
	)	
	)	Pre-Trial Conference:
	)	9/1/2020 at 8:30 a.m.
	)	Courtroom 4
	)	
	)	Trial: 10/27/2020 at 8:30 a.m.
	)	Courtroom 4
	)	Jury trial: 3-7 days

1 **I. Date of Scheduling Conference**

2 September 24, 2019.

3 **II. Appearances of Counsel**

4 Donald Potter appeared on behalf of Plaintiff.

5 Paloma Peracchio appeared on behalf of Defendant.

6 **III. Magistrate Judge Consent: Notice of Congested Docket and Court Policy of Trailing**

7 Due to the District Judges' heavy caseload, the adopted policy of the Fresno Division of the  
8 Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set before a  
9 District Judge, the parties will trail indefinitely behind any higher priority criminal or older civil case  
10 set on the same date until a courtroom becomes available. The trial date will not be reset.

11 The Magistrate Judges' availability is far more realistic and accommodating to parties than that  
12 of the U.S. District Judges who carry the heaviest caseloads in the nation and who must prioritize  
13 criminal and older civil cases over more recently filed civil cases. A United States Magistrate Judge  
14 may conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of  
15 Civil Procedure 73, and Local Rule 305. Any appeal from a judgment entered by a United States  
16 Magistrate Judge is taken directly to the United States Court of Appeal for the Ninth Circuit.

17 The Fresno Division of the Eastern District of California, whenever possible, is utilizing United  
18 States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant to the  
19 Local Rules, Appendix A, such reassignments will be random, and the parties will receive no advance  
20 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern  
21 District of California.

22 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to  
23 conduct all further proceedings, including trial. **Within 10 days** of the date of this order, counsel  
24 **SHALL** file a consent/decline form (provided by the Court at the inception of this case) indicating  
25 whether they will consent to the jurisdiction of the Magistrate Judge.

26 **IV. Pleading Amendment Deadline**

27 Any requested pleading amendments are ordered to be filed, either through a stipulation or  
28 motion to amend, no later than **December 19, 2019**.

1 **V. Discovery Plan and Cut-Off Date**

2 The parties have exchanged the disclosures required by Fed. R. Civ. P. 26(a)(1).

3 The parties are ordered to complete all discovery pertaining to non-experts on or before  
4 **February 10, 2020**, and all discovery pertaining to experts on or before **April 1, 2020**.

5 The parties are directed to disclose all expert witnesses<sup>1</sup>, in writing, on or before **February 18,**  
6 **2020**, and to disclose all rebuttal experts on or before **March 10, 2020**. The written designation of  
7 retained and non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B),**  
8 **and (C) and shall include all information required thereunder**. Failure to designate experts in  
9 compliance with this order may result in the Court excluding the testimony or other evidence offered  
10 through such experts that are not disclosed pursuant to this order.

11 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts  
12 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions  
13 included in the designation. Failure to comply will result in the imposition of sanctions, which may  
14 include striking the expert designation and preclusion of expert testimony.

15 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement  
16 disclosures and responses to discovery requests will be strictly enforced.

17 A mid-discovery status conference is scheduled for **December 3, 2019** at 8:30 a.m. before the  
18 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,  
19 California. Counsel SHALL file a joint mid-discovery status conference report one week before the  
20 conference. Counsel also SHALL lodge the status report via e-mail to JLTorders@caed.uscourts.gov.  
21 The joint statement SHALL outline the discovery counsel have completed and that which needs to be  
22 completed as well as any impediments to completing the discovery within the deadlines set forth in this  
23 order. Counsel may appear via teleconference by dialing (888) 557-8511 and entering Access Code  
24 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk receives a written notice of the  
25 intent to appear telephonically no later than five court days before the noticed hearing date.

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28 <sup>1</sup> In the event an expert will offer opinions related to an independent medical or mental health evaluation, the examination SHALL occur sufficiently in advance of the disclosure deadline so the expert's report fully details the expert's opinions in this regard.

1 **VI. Pre-Trial Motion Schedule**

2 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later  
3 than **April 13, 2020<sup>2</sup>** and heard on or before **May 11, 2020**. Non-dispositive motions are heard before  
4 the Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States Courthouse in  
5 Bakersfield, California.

6 **No motion to amend or stipulation to amend the case schedule will be entertained unless it**  
7 **is filed at least one week before the first deadline the parties wish to extend.** Likewise, no written  
8 discovery motions shall be filed without the prior approval of the assigned Magistrate Judge. A party  
9 with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by  
10 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly  
11 shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be the  
12 obligation of the moving party to arrange and originate the conference call to the court. To schedule  
13 this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at  
14 (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with Local Rule 251**  
15 **with respect to discovery disputes or the motion will be denied without prejudice and dropped**  
16 **from the Court's calendar.**

17 Counsel may appear and argue non-dispositive motions via teleconference by dialing (888) 557-  
18 8511 and entering Access Code 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk  
19 receives a written notice of the intent to appear telephonically no later than five court days before the  
20 noticed hearing date.

21 All dispositive pre-trial motions shall be filed no later than **May 26, 2020** and heard no later  
22 than **July 7, 2020**, in Courtroom 4 at 8:30 a.m. before the Honorable Lawrence J. O'Neill, United States  
23 District Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56 and**  
24 **Local Rules 230 and 260.**

25 **VII. Motions for Summary Judgment or Summary Adjudication**

26 **At least 21 days before** filing a motion for summary judgment or motion for summary  
27

28 <sup>2</sup> Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable time of  
discovery of the dispute, but in no event later than 30 days after the expiration of the non-expert discovery  
deadline.

1 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues  
2 to be raised in the motion.

3 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a  
4 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole  
5 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the  
6 issues for review by the court; 5) explore the possibility of settlement before the parties incur the  
7 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

8 The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed  
9 statement of undisputed facts **at least five days before** the conference. The finalized joint statement of  
10 undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be  
11 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint  
12 statement of undisputed facts.

13 In the notice of motion the moving party **SHALL** certify that the parties have met and conferred  
14 as ordered above, or set forth a statement of good cause for the failure to meet and confer. **Failure to**  
15 **comply may result in the motion being stricken.**

16 **VIII. Pre-Trial Conference Date**

17 **September 1, 2020** at 8:30 a.m. in Courtroom 4 before Judge O'Neill.

18 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2).**  
19 The parties are further directed to submit a digital copy of their pretrial statement in Word format,  
20 directly to Judge O'Neill's chambers, by email at LJOorders@caed.uscourts.gov.

21 Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the  
22 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.  
23 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the  
24 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the  
25 Court to explain the nature of the case to the jury during voir dire.

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1 **IX. Trial Date<sup>3</sup>**

2 **October 27, 2020** at 8:30 a.m. in Courtroom 4 before the Honorable Lawrence J. O'Neill,  
3 United States District Court Judge.

4 A. This is a jury trial.

5 B. Counsels' Estimate of Trial Time: 3-7 days.

6 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of  
7 California, Rule 285.

8 **X. Settlement Conference**

9 A settlement conference is scheduled for **January 22, 2020** at 9:00 a.m., located at 510 19<sup>th</sup>  
10 Street, Bakersfield, California.

11 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case**  
12 **shall appear** at the Settlement Conference **with the parties** and the person or persons having **full**  
13 **authority** to negotiate and settle the case **on any reasonable terms**<sup>4</sup> discussed at the conference.

14 Consideration of settlement is a serious matter that requires preparation prior to the settlement  
15 conference. Set forth below are the procedures the Court will employ, absent good cause, in  
16 conducting the conference.

17 **At least 21 days before** the settlement conference, Plaintiff **SHALL** submit to Defendant via  
18 fax or e-mail, a written itemization of damages and a meaningful<sup>5</sup> settlement demand which includes  
19 a brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days before**  
20 the settlement conference, Defendant **SHALL** respond via fax or e-mail, with an acceptance of the  
21 offer or with a meaningful counteroffer, which includes a brief explanation of why such a settlement  
22 is appropriate.

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24 \_\_\_\_\_  
25 <sup>3</sup> Counsel are advised that Judge O'Neill has announced that he will retire from the Court in January 2020. Once  
26 this occurs, the case will be reassigned, but it is unlikely the trial will occur until Judge O'Neill's replacement is selected. In  
27 recent times, this process has taken up to three years to occur.

28 <sup>4</sup> Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements  
are subject to approval by legislative bodies, executive committees, boards of directors or the like may be represented by  
a person whose recommendations about settlement are relied upon by the ultimate decision makers.

<sup>5</sup> "Meaningful" means the offer is reasonably calculated to settle the case on terms acceptable to the offering  
party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to the other party.  
If, however, the offering party is only willing to offer a settlement which it knows the other party will not accept, this  
should trigger a recognition the case is not in a settlement posture and the parties should confer about continuing the  
settlement conference via stipulation.

1 If settlement is not achieved, each party **SHALL** attach copies of their settlement offers to  
2 their Confidential Settlement Conference Statement, as described below. Copies of these documents  
3 shall not be filed on the court docket.

4 **CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT**

5 **At least five court days before** the settlement conference, the parties shall submit, directly to  
6 Judge Thurston's chambers by e-mail to JLTOOrders@caed.uscourts.gov, a Confidential Settlement  
7 Conference Statement. The statement **should not be filed** with the Clerk of the Court **nor served on**  
8 **any other party**, although the parties may file a Notice of Lodging of Settlement Conference  
9 Statement. Each statement shall be clearly marked "confidential" with the date and time of the  
10 Settlement Conference indicated prominently thereon.

11 The Confidential Settlement Conference Statement shall include the following:

- 12 A. A brief statement of the facts of the case.
- 13 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon  
14 which the claims are founded; a forthright evaluation of the parties' likelihood of  
15 prevailing on the claims and defenses; and a description of the major issues in dispute.
- 16 C. A summary of the proceedings to date.
- 17 D. An estimate of the cost and time to be expended for further discovery, pretrial and  
18 trial.
- 19 E. The relief sought.
- 20 F. The party's position on settlement, including present demands and offers and a history  
21 of past settlement discussions, offers and demands.

22 **XI. Request for Bifurcation, Appointment of Special Master, or other**  
23 **Techniques to Shorten Trial**

24 Not applicable at this time.

25 **XII. Related Matters Pending**

26 There are no pending related matters.

27 **XIII. Compliance with Federal Procedure**

28 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure

1 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any  
2 amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently  
3 handle its increasing case load and sanctions will be imposed for failure to follow both the Federal  
4 Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

5 **XIV. Effect of this Order**

6 The foregoing order represents the best estimate of the court and counsel as to the agenda most  
7 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the  
8 parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered  
9 to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by  
10 subsequent status conference.

11 **The dates set in this order are and will not be modified absent a showing of good cause**  
12 **even if the request to modify is made by stipulation. Stipulations extending the deadlines**  
13 **contained herein will not be considered unless they are accompanied by affidavits or declarations,**  
14 **and where appropriate attached exhibits, which establish good cause for granting the relief**  
15 **requested.**

16 Failure to comply with this order may result in the imposition of sanctions.

17  
18 IT IS SO ORDERED.

19 Dated: September 24, 2019

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE